IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1866/1996

Moola Ram & Ors. vs. State of Rajasthan and others.

Date : 6.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.KR Choudhary, for the petitioners.

Mrs.RR Kanwar, Dy.GA)
Mr.RK Soni) for the respondents.

- - - - -

BY THE COURT :

Heard learned counsel for the parties.

The present writ petition has been preferred by the petitioners to challenge three judgments of the courts below as the petitioner's suit for declaration of khatedari rights for the land measuring 144 bighas 2 biswas was dismissed by the Court of Assistant Collector, Jaisalmer vide judgment and decree dated 30.11.1979 and regular first appeal was dismissed by the Revenue Appellate Authority, Jodhpur vide judgment

and decree dated 30.10.1985 and thereafter, second appeal was dismissed by the Board of Revenue vide judgment and decree dated 25.10.1991.

The plaintiffs' case was that they were khatedar tenants of total land measuring 345 bighas which was situated in village Fatehgarh. Said land was recorded in the name of the plaintiffs at the time of summary settlement which was conducted for the land of Jaisalmer District but in the final settlement, the land came in the area of several villages which are Khodiasar, Fatehgarh and Sadhuva. According to the petitioner, out of 340 bighas land, land measuring 144 bighas 2 biswas which came in the area of Village Sadhuva having khasra no.1 measuring 17 bighas 10 biswas, land of khasra no.434 measuring 13 bighas 4 biswas and khasra no.434/576 measuring 10 bighas 10 biswas in Village Fatehgarh as well as land in village Khodiyasar having khasra no.106 measuring 74 bighas and 12 biswas, was not recorded in the name of the plaintiffs/petitioners during final settlement and, therefore, the plaintiffs filed the suit for declaration of their khatedari rights for the lands mentioned above.

The defendant State submitted written statement and denied the plaintiffs' allegations.

In the trial court, the plaintiffs produced

witnesses and also produced several documents.

The trial court considered all the documents in detail in its judgment dated 30.11.1979 and held that the plaintiffs failed to prove that the land which they are claiming, is their khatedari land. The plaintiffs further failed to prove that the documents produced by them had any relation with the land in dispute. The trial court, therefore, dismissed the suit of the plaintiffs. The appeals were also dismissed.

Learned counsel for the petitioners vehemently submitted that the Board of Revenue committed serious error of law in dismissing the second appeal of the petitioners by observing that the petitioners failed to prove their case beyond doubt. According to learned counsel for the petitioners, such requirement is only in criminal cases and in civil and revenue cases, the Court could not have dismissed the suit on the basis of such ground and in civil or revenue suits, issue can be decided as per preponderance of probabilities. It is also submitted that the courts below have not considered the documents produced by the plaintiffs and, therefore also, they have committed illegality.

Learned counsel for the petitioners also submitted that respondent no.3 Bakhta Ram admitted the possession of the plaintiffs over the land of khasra no.106 which is known as Kankarwala land. In view of the above

reason, the possession of the plaintiffs over the land of khasra no.106 is proved.

Learned counsel for the respondent State submitted that three courts below considered all the relevant documents and thereafter, recorded finding of fact which may not be interfered by this Court while exercising jurisdiction under Article 227 of the Constitution of India as fourth appellate court. It is also submitted that three courts below considered the documents and, therefore, the contention of the petitioners that the documents were not considered by the courts below is wrong.

Learned counsel for the respondent no.3 also supported the judgments and decrees passed by the courts below.

I considered the submissions of learned counsel for the parties and perused the reasons given by the three courts below.

It appears from the judgment of the trial court itself that the trial court considered all the documentary and oral evidence and thereafter, rejected the claim of the petitioners/plaintiffs. It is well settled law that for getting declaration of khatedari

right over agriculture land, one is required to prove that he was admitted as tenant in the land in question and in this case, it appears that the petitioners though produced several documents but they failed to connect the documents with the land in question and three courts, after considering the oral and documentary evidence, decided the finding of fact against the plaintiffs. In view of the above reason, the finding of fact which has been recorded on appreciation of documents, cannot be interfered by this Court while exercising jurisdiction under Article 227 of the Constitution of India.

There is another reason for dismissal of the writ petition which is that the petitioner preferred writ petition in the year 1996 to challenge the judgment and decree of the Board of Board of Revenue which was passed in the year 1991.

So far as any admission of the respondent no.3 Bakhta Ram that the plaintiffs are or were in possession of the land in khasra no.106 is concerned, that admission can be used against said Bakhta Ram and since the petitioners filed suit for declaration of his khatedari right so as to seek relief against the State for recording his name as khatedar tenant, the petitioners merely on the basis of admission of the respondent no.3 cannot get this relief particularly

when the State has not admitted the fact of possession of the plaintiffs over any land.

In view of the above reasons, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya